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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 26 2009
SRC 07 274 50593

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a postdoctoral associate at Rutgers University, Piscataway, New Jersey.[1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B)Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

[1] Since the filing date, other intending employers have filed Form I-129 nonimmigrant petitions on the alien's behalf. All three petitions, listed below, have been approved.

I-129 Receipt Number	Petitioning employer	Filing date	Dates of validity
WAC 07 263 52384	Wayne State University	09/12/2007	09/10/2007 – 09/10/2008
WAC 08 235 50834	Wayne State University	08/29/2008	09/10/2008 – 09/09/2011
EAC 09 143 52187	Chem Master International, Inc.	04/21/2009	10/01/2009 – 09/30/2012

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

Several witness letters accompanied the July 26, 2007 filing of the petition; we shall discuss examples of these letters here. [redacted] stated:

> [The petitioner] is a chemist who conducts internationally recognized advanced research in the area of pharmaceutical sciences. More specifically, [the petitioner's] research involves the study of new drug delivery systems for cancer therapeutics. . . .
>
> Information regarding [the petitioner's] research is widely referenced. Other scientists and researchers worldwide have cited his research over 70 times in publications in internationally acclaimed, peer adjudicated journal articles. . . .
>
> The letters of support submitted with this petition come from top scientific researchers from highly regarded academic institutions and research centers around the world.

[redacted] of the Environmental and Occupational Health Sciences Institute affiliated with both Rutgers and the University of Medicine and Dentistry of New Jersey (UMDNJ), stated:

> [The petitioner] has made groundbreaking findings in controlled drug delivery systems called polymeric nanocarriers to combat breast cancer. [The petitioner's] development of several unique strategies has lead [*sic*] to new applications in controlled drug delivery systems. . . . [The petitioner] demonstrated that his system is effective in protecting healthy human cells against tumor cells. His work has shown that certain chemical features of his drug delivery system are able to specifically target tumor cells.

[redacted] stated:

> I came to know about [the petitioner] through his magnificent contributions to pharmaceutical science, which has appeared in a leading scientific journal. His work focuses on the delivery of anti-cancer agents using novel designs of polymer carriers. . . . When these polymers are hydrated, they can circulate in the blood for periods of up to about 24 hours. Another important advantage of this polymer is that the linkage can be designed to control where and when the drug is released by tumor cells. It also allows the use of much higher dose[s] of these anti-cancer drugs. He had demonstrated that up to 10 fold of polymer-drug conjugate material could be given in a single dose to a mouse without any toxicity.

[redacted] of Lehigh University stated:

> [The petitioner's] work establishes an excellent method for deprotection of the N-Boc group, a methodology useful for synthesis of many biologically active compounds and peptides. Discovering a useful new method in organic chemistry is a significant achievement.

> . . . [The petitioner] is researching two promising therapies for cancer which may be applied to breast cancer. He has also discovered an important pathway for the prevention of cancer. His work has significant implications in cancer chemopreventive and chemotherapeutic areas and has significant value to improve health care.
>
> Also, [the petitioner] has discovered that his drug delivery system has potent chemotherapeutic activity against cutaneous breast carcinoma, melanoma and leukemia cells. [The petitioner] discovered that subcarcinogenic doses delivered by this system drastically increase tumor DNA damage ultimately leading to cell death and effective cancer treatment. This work is ground breaking because it provides a totally new system for anti-cancer intervention, and will no doubt lead to new considerations for preventive and therapeutic strategies.

[redacted] of Adam Mickiewicz University, Poland, asserted that the petitioner's "continued research is necessary to yield commercially viable technology in the form of novel medications."

The petitioner submitted printouts from citation databases and copies of citing articles and book chapters, establishing 73 citations of his work. About 90% of these citations are independent rather than self-citations by the petitioner or his co-authors.

On September 25, 2008, the director issued a request for evidence, instructing the petitioner "to further clarify how the beneficiary's research is greater/different from [his] peers who have conducted similar research." In response, the petitioner submitted several new witness letters. Most of these letters focus on the petitioner's recent work with drug delivery systems in pregnant women and newborn infants. The petitioner had not yet begun such work at the time he filed the petition, and therefore we take notice of this work only to establish that the petitioner continues to conduct drug delivery research. A more general letter is from [redacted] of the University of Illinois at Urbana-Champaign, who credited the petitioner with "key contributions in a number of areas of pharmaceutical chemistry with potential medical applications."

also stated that the petitioner's "work has been widely cited by the scientific community around the world." The record amply supports this assertion. The petitioner submitted an updated citation index showing 110 citations of publications, and copies of new citing articles.

The director denied the petition on November 14, 2008. The director stated that "the many letters of support . . . have not clearly established the beneficiary has greater ability than their peers." The decision contained little discussion of the petitioner's work apart from a paragraph about his development of a Doxorubicin delivery system.

On appeal, counsel argues that "independent expert letters and a noteworthy citation record . . . was seemingly ignored." There is merit to this assertion. The director did not mention the citations at all,

and the director dismissed the witness letters with the observation that "many" of them were from the petitioner's collaborators. As counsel observes on appeal, "ten of the letters were from independent sources," many of whom had previously cited the petitioner's work. Thus, the petitioner not only established widespread and continuing citation of his work, but also established how others were using his findings. The director's decision does not appear to have taken these factors into account.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.